

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-267

D. L.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 22, 2008

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. JV-2007-587]

HONORABLE MARK HEWETT,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Appellant D.L. was adjudicated a delinquent after he was found to have possessed a controlled substance (marijuana). At the time of his adjudication, he was seventeen years old. For his sole argument on appeal, D.L. argues that the trial court's decision was not supported by substantial evidence. We affirm.

Although a delinquency adjudication is not a criminal conviction, it is based on an allegation by the State that the juvenile has committed a crime. *Rogers v. State*, 78 Ark. App. 103, 78 S.W.3d 743 (2002). The standard of review for sufficiency of the evidence in a juvenile proceeding is the same as in a criminal case. *Pack v. State*, 73 Ark. App. 123, 41 S.W.3d 409 (2001). And, the record is reviewed in the light most favorable to the State to determine whether there is substantial evidence to support the conviction. *J.R. v. State*, 73 Ark. App. 194, 40 S.W.3d 342 (2001). Substantial evidence is that which is of sufficient force

and character that it will, with reasonable certainty, compel a conclusion one way or another, without mere speculation or conjecture. *Id.* On appeal, neither the credibility of the witnesses nor the evidence presented at trial will be re-weighed, because those matters are left to the trier of fact. *Clem v. State*, 351 Ark. 112, 90 S.W.3d 428 (2002).

In order to prove constructive possession of contraband found in an automobile occupied by more than one person, there must be some factor other than joint occupancy linking the accused to the contraband. *Mings v. State*, 318 Ark. 201, 884 S.W.2d 596 (1994). In a constructive-possession case, “the State is not required to prove that the accused physically possessed the contraband in order to sustain his conviction for possessing it if the contraband was located in a place where it could be said to be under the accused’s dominion and control.” *McKenzie v. State*, 362 Ark. 257, 262–63, 208 S.W.3d 173, 175 (2005). Control and knowledge may be inferred from the circumstances where there are additional factors linking the accused to the contraband. *Nichols v. State*, 306 Ark. 417, 815 S.W.2d 382 (1991). Factors to be considered are: (1) whether the contraband was in plain view; (2) whether the contraband was found in the accused’s personal effects; (3) whether it was found in, or in proximity to, the side of the car on which the accused was sitting; (4) whether the accused was the owner of the automobile, or exercised dominion and control over it; (5) whether the accused acted suspiciously before or during the arrest. *Malone v. State*, 364 Ark. 256, 217 S.W.3d 810 (2005). Finally, constructive possession may be established by circumstantial evidence. *McKenzie v. State*, 362 Ark. at 263, 208 S.W.3d at 175.

Fort Smith Police Officer Vu Pham testified that on the evening of September 7, 2007, he stopped a car for making an improper turn. Jamie Rogers, the owner of the vehicle, exited

the vehicle. However, Pham ordered her back into the car. Pham testified that as he approached the car, he instantly smelled a distinct odor of marijuana.

At Pham's request, Officer Scott Newton arrived as backup. Newton stated that when he approached the car, he asked the passenger (later identified as D.L.) to exit the vehicle and immediately noticed a plastic baggie situated between the seat and the door. At this point, Newton took D.L. to the back of the vehicle and placed him in handcuffs. Upon investigation, Newton determined that the baggie was approximately six inches from the passenger seat; he discovered that it contained a leafy, green matter that smelled and appeared to be marijuana. He also discovered a rolled marijuana joint sitting beneath the baggie. Loose marijuana was found between the door and the passenger seat. According to the evidence, a total of 6.3 grams of marijuana was found, all of it stashed beside the passenger seat.

Rogers also testified. She claimed that D.L., her boyfriend, knew nothing about the marijuana. Instead, she claimed that the drug belonged to her friend Sarah, who rolled a joint while they drove around town. She testified that she dropped Sarah off just moments before giving D.L. a ride home at the request of his mother. She also admitted that she had lied to the officers when she claimed ignorance of the fact that marijuana was in her car.

At trial, the trial court discredited Rogers's testimony. Specifically, the trial court was skeptical of the fact that Rogers had never mentioned Sarah before the hearing and could not recall her last name or where she lived, despite the fact that Rogers claimed to have dropped Sarah off only minutes before picking up D.L. that night.

The trial court also made a finding that due to D.L.'s proximity to the marijuana, he had immediate access and control over it. Further, the court noted that D.L. had a previous

marijuana adjudication, and, as such, could not claim ignorance of the smell of marijuana that was located only six inches from his person.

Based on the evidence submitted at trial, we are satisfied that substantial evidence supports the finding that D.L. possessed marijuana because it was in plain view and was within his proximity and control. Therefore, the trial court's adjudication is affirmed.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.